

IJTIHAD AND ITS RELATIONSHIP WITH MASLAHAH : AN ANALYSIS REVIEW

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ABSTRACT

This paper aims to study the relationship between *ijtihad* and *maslahah*. The selection of *maslahah* compared to other arguments that play a role in the process of *ijtihad* is because it is an argument that is required to answer new questions that cannot be answered primarily through *ijtihad* within the scriptures range (*ijtihad* Bayani and *ijtihad* analogous). Without denying the *ijtihad* within the scriptures range, understanding of the *maslahah* itself is required. Despite that, this article explains its relationship only and subsequently presents a few examples of applications of *maslahah* in *ijtihad* as an exposure toward the reasonability of the usage in dealing with new issues today. Finally, it is expected that this article can be a guidance in determining the law to new arguments that have no direct explanation from the verses of al-Quran and al-Hadith.

Keywords: Ijtihad, maslahah, Islamic law, shariah

1.0 INTRODUCTION

Ijtihad is a body of knowledge that cannot be denied with regard to its implementation in Islam. Any denial of the implementation means to deny the holistic of view Islamic law, which allows the development and current changes to be adjusted to Muslims and non-Muslims that should be forced in order to keep abreast with its development. Nevertheless, this paper highlights the relationship of *ijtihad* concerned with one of the guides outlined, namely *maslahah*. It is a guide which is fundamental in ensuring an *ijtihad* is on track. Indirectly, it controls the passion and interests that should not be in the production of an *ijtihad*. *Ijtihad* means 'to exert power and capability to bring distress and hardship to the perpetrator to achieve something'. The use of this word in Arabic language is about the matters that bring hardship and difficulty to the perpetrator (al-Zuhaili, 1986). Meanwhile, from terminology, *ijtihad* means "exertion and capability by a mujtahid to find relevant science laws of shariah through *istinbat* methods". Based on this term, Zaidan (1993) stated that *ijtihad* includes the following items:

- i. Exertion and capability by a mujtahid to focus his energy and maximum ability to perform *ijtihad*.
- ii. The efforts can only be done by people who are eligible to be counted as a mujtahid.
- iii. The purpose is to know merely about the practical of sharia laws.
- iv. The laws must be known through the *istinbat* method which is to retrieve the laws from the arguments through the process of in-depth research and study. In conclusion, from the definition *ijtihad* is a process to deduce shariah laws of the *tafşil* arguments in Islamic legislation.

2.0 THE NEED FOR *IJTIHAD*

The Islamic law cannot last long and will be obsolete if it is only referred on scriptures that are static and do not accept changes. Ijtihad allows the law to meet the needs and changes during life, which require a proper solution. Without a doubt, there are things that are not allowed by ijtihad if it involves something that is already eternal and irreversible, known as the *thawabit* (permanet) in religion such as divine beliefs, basic principles of law and so on.

Generally, Allah has created Islamic laws that suit all times and places. The scriptures and rules of shariah mostly come in the form of general, while events always happen and not limited to certain times. Therefore, there is no other way to know the shariah explanation regarding these developments except by practicing ijtihad (Kassab 1984). Moreover, ijtihad knowledge is so vast and always accepts new things for the law to be decided by the mujtahid. It remains open to things that have been decided by the previous mujtahid in the knowledge that allows the implementation of ijtihad (al-Zuhaili, 1986). However, when it comes to new problems, it should be associated with the knowledge that permits the implementation of ijtihad or contrarily. Some mistakes in the knowledge will be vulnerable to loss of control in ijtihad towards the human mind. Thus, failure to find a guide in ijtihad will bring great harm to the religion and humanity itself.

3.0 CONCEPT OF *MASLAHAH*

Al-Ghazali (t.th.) stated that *maslahah* is a concept of providing benefits and rejecting harms. He further stated that *maslahah* submitted by the Islamic law aims to maintain a goal of Shari'a (Maqasid al-Sharia) itself which is to ensure and maintain *maslahah* that return to the people and prevent them from being harmed based on the preservation of 5 things namely religion, the self, intellect, lineage and property. Any actions that undermine these 5 things is known as *mafsadah* (damage), while preserving the 5 things is known as *maslahah*. Al-Buti (1982) stated that scholars have agreed (*ijmac*) that the law of God is a guaranteed *maslahah* to humankind in this world and the afterlife in line with a verse in al-Quran, which means:

“And We have not sent you, (O Muhammad), except as a mercy to the worlds. (Mankind, jinns and all that exists)”.(al-Quran; al-Anbiya’: 107)

According to Zaidan (1993), the *maslahah* discussed here is based on the consideration of the Islamic judgement and not due to human passion and lust. This is because, if the judgement is left to humans, then a person will only see it with the eyes of mere lust, changing a benefited matter to a harmful matter and vice versa. This can happen when a person is impressed with lust encouragement and self-interests within a certain time.

4.0 CATEGORY OF *MASLAHAH*

Maslahah consists of three categories namely; al-Dharuriyat, al-Hajiyat and al-Tahsiniyat. Al-Dharuriyat is an indispensable *maslahah* to ensure the existence of human and society. Should it be absent, then the lives and human systems will be in chaos. Humans will be miserable in the world, and will be punished in the Hereafter. Matters that fall within the category of al-Dharuriyat are religion, life, intellect, lineage and property. These five things are preserved by the Islamic law through implementation of laws that serve to make it happen and keep it from

any damage. For example, in terms of children, marriage is prescribed to ensure its existence. At the same time, rules and laws are prescribed such as prohibiting adultery and enforce punishment for adultery. Al-Hajiyat are the things needed by human to lift people out of suffering and difficulties. Its absence does not imply damage to the system of human life, but they will be in a state of constant difficulty and hardship. Therefore, the proposed laws for lifting the human predicament is included in the category of al-Hajiyat. For example, the ruksah law is proposed to ease the difficulty for those who are concerned.

Similarly, various aspects of the system in Muamalat are prescribed as an exception from the general rule in the law such as compulsion of purchasing shares, divorce and so on. al-Tahsiniyat are the things that make human to be in highly good manners and morals. Its absence does not imply damage to human life and the system does not cause hardship to them. However, it makes their life to be conflicting with a dignified life, morality and human nature. Islamic laws preserve aspects of al-Tahsiniyat in various aspects of human life such as religious aspect, financial transactions, customs and even punishment. For example, Islam requires Muslims to cover the aurah, by wearing good clothes when entering the mosques, prohibit sale of other sales, determine certain ethics of aspects of the customs that are commonly dealt by people and so on (Zaidan, 1993). In addition, to complete the maslahah among humans, the three categories are complemented. For example, in the category of al-Dharuriyat, besides prohibiting adultery for the purpose of preserving the offspring, Islamic law forbids the things that can bring harm to a person. Among them are forbidding seclusion between men and women, and also forbidding women to wear dresses that can draw attention of men with lust. In the category of al-Hajiyat, besides provision of some types of buying and selling methods to avoid the difficulty to humans, the Islamic law also stipulates certain conditions as a complement to these methods. Meanwhile, in the category of al-Tahsiniyat, sunnah practices al-Nawafil are prescribed as a complement to the compulsory acts of worship (Zaidan, 1993).

5.0 RELATIONSHIP BETWEEN *IJTIHAD* AND *MASLAHAH*

I. Islamic Law and *Maslahah*

The Islamic laws within the range of maslahah is described in the discussion on the maslahah as abovementioned. Even Raisuni & Barut (2000) stated that sharia is a maslahah and emphasized that this is accepted by most scholars. They stated that this matter can be understood through the statement of scholars regarding maslahah such as "the presence of the shariah is to bring maslahah and avoid mafasid (damage)", "shariah is placed on the delayed and immediate maslahah of humans". In addition, Zaidan (1993) explained that the laws of shariah itself serve as a guide to the mankind in order to know the good and bad things, and subsequently drive people to do good and avoid harm. He also put forward a method to explain his point of view, namely the method *ما نهى شرعا فقيح والا فحسن* which means "anything that is forbidden by the Islamic law is bad and anything that is not prohibited is good". He also explained that not all good and bad things are known through human reasoning (because the mind is exposed to weakness). Some of them are readily known and some of which require hard work to find out. Because of that, the law is brought in to guide people to the way it should be. This is in line with the objectives of the Islamic law which is to ensure maslahah and reject harm. Among other things, this can be seen from the point of view of al-Syatibi (1969) as follows:

"Any excuse prescribed is caused by the maslahah itself. If mafsadah was found then it is not something that is prescribed because of the reasons mentioned. And it is not something

forbidden by the Islamic law unless it causes mafsadah. If maslahah was found then it is not caused by the forbidden reason".

As a clarification to this matter, two events were submitted that have a relatively similar situation but the Prophet defined two different laws based on maslahah. The first event was based on the hadith of Abu Musa al-Ash'ari, who said that he came to the Prophet with two young men from Bani Ammi. Then said one of the boys: "O Rasulullah, make us the leader at any place that God has given to you." The same request was made by another young man. He replied, "We do not give the job as leader in matters like this to someone who asked for it or to someone trying to get it." (Sharh Muslim, Kitab al-Imarah, Bab al-Nahyi An Thalab al-Imarah wa al-Hirsi alaihi, No. of hadith 1733).

The above hadith clearly indicates that those who ask for position should not be given the position based on a clear maslahah. It can be seen through many events of the disaster caused by the greed of those who seek to gain power, as well as disaster faced by many people because of the power held by those who do not deserve it. This hadith also has the value of tarbiyah which teaches us to preserve love for power and influence, which in turn is a factor that desire possession of wealth and materials to meet the needs of a soul (Raisuni & Barut, 2000). However, in the second event, there is another hadith that showed that the Prophet Muhammad PBUH gave positions to those who asked. This shows that maslahah is the basis of the provisions of the two decisions made by the Prophet at that time. The story was about Ziad Bin al-Harith of Bani Khuda who brought a representative of his people to meet the Prophet to inform that his people had embraced Islam. In the story, Ziad said: "I asked the Prophet to make me as the head of my people and asked him to write me a declaration as the head, and then he did it."

Ibn al-Qayyim (1990) stated that this story showed that a leader should be appointed from the person requesting the position if he is qualified for the position. He also noted that the actions of the Prophet who gave that position to Ziad did not contradict the hadith that indicated that the Prophet did not give positions to those who eagerly asked for positions. There was a difference between the two situations. In this hadith, Ziad asked to be appointed as the leader to his people specifically, and he was a man who was respected and loved by his people. The purpose of requesting this position is merely to reform and bring his people to Islam. Therefore, the Prophet saw it as a maslahah to accept the request. Meanwhile in the first hadith, the Prophet saw that both the person requesting the position of the Prophet is for their own personal maslahah and therefore, the Prophet refused. From these two situations, Ibn al-Qayyim (1990) viewed that the granting and refusal of the application for the positions were determined by maslahah. Therefore, in the discussion about ijtihaad, Dr. Wahbah Zuhaili (1993) has put preservation of maslahah as one guidance to ensure that ijtihaad can be controlled from deviating from the righteous way. Which is, among others, he suggested that an ijtihaad must follow the conditions imposed by the Islamic law which complies with the truth and enable preservation of maslahah as well as refusing mafsadah. In other words, it is not just based on the reasoning controlled by lust and self-interest (specific maslahah) which are contrary to the public interests (public maslahah).

II. Maslahah As One Of the Guides In Deciding Ijtihaad

Generally, maslahah as a reference in ijtihaad is not strange in the development of shariah laws. In fact, maslahah acts as a guide in deciding ijtihaad that has been applied since the early days of

Islam. There was even an argument indicating that the Prophet PBUH himself confirmed his companion's *ijtihad* based on *maslahah*. This shows that, although discussions on *maslahah* as a knowledge has not been performed in the early days but the application of *maslahah* has been accepted as a guide at that time. Therefore, a few examples of applications using *maslahah* since the early days of Islam are presented below.

CASE 1: The Age of the Prophet Muhammad PBUH: Recognition of the Prophet on his companion's *ijtihad* that met the *maslahah* and his refusal toward other companion's *ijtihad*. It can be seen through a story of a chief who was appointed by the Prophet to head a group of *sariyyah* who has instructed his people to enter the fire as to obey the leader. It has been mentioned that there were some who wanted to obey this command and the others escaped from him. When they met the Prophet, they recounted the incident to him. He told those who wish to obey the instruction that if they enter into the fire, as instructed, they will remain in it until the Day of Resurrection. Meanwhile those who escaped the Prophet said to them with good words (Ibn al-Qayyim, 1990). From this event we can see the different stance of the Prophet PBUH towards the two groups. The first stance depicts a stern warning to those who interacted with the passage of interaction in an old-fashioned way and did not see *maslahah* and *mafsadah* as well as did not study the purpose. While the second group, the Prophet praised those who seek to see the passage with wisdom (Raisuni & Barut, 2000).

CASE 2: Age of companions: *Ijtihad* by Umar al-Khattab regarding the division of the spoils of war to the *muallaf*. *Ijtihad* by Umar al-Khattab was an *ijtihad* which appeared to contradict with the scripture, the word of Allah in Surah al-Tawbah, verse 60 which means:

"Indeed zakat, it is just for the *Fuqara'* (poor), and *Al-Masakin* (the poor) and those employed to collect (the funds); and to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah's cause (i.e. for *Mujahidun* – those fighting in the holy wars), and for the wayfarer (a traveler who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise." With regard to this, Umar al-Khattab has acted with actions that did not follow the above pronouncement that he did not submit this to the *muallaf* based on his *ijtihad* and at that time Islam was strong and did not intend to attempt to soften the hearts of those who are certain. This was clear in his speech to the two *muallaf* who requested their shares by saying:

"The Messenger of Allah during his life giving your shares for you because Muslims at that time were weak. And indeed, on this day Allah has enriched and glorified Islam. Go and strive as all other Muslims are trying to make a living. Indeed, it is the truth from your Lord, so whoever wishes to believe, he will believe and whoever denies it, he will deny it"

Umar's action was viewed by the *fuqaha* as not contradicting with the scripture because his action was not denying the shares. It was only a postponement because it was not counted as *maslahah* to Muslims at that time. Just as it happened in the days after the time of Umar Bin Abdul Aziz, a temporary cessation of the division of zakat was made to the poor because none was worthy to receive zakat in the Islamic countries at that time due to the luxury of its people. This event showed that Umar was *ijtihad* to know the *maslahah* that became the reason of revelation of scriptures or *illah* behind a resolution. This was mentioned in the present Islamic jurisprudence as "taking a cue from the spirit of the law" (Nadiah Sharif al-Umri, 1985). This incident also illustrated that the law regarding the existence or not of the groups that worth the

shares is dependent on the position of the Muslims at that time. The position of Muslims is the basis of maslahah in this discussion.

CASE 3: Age of the companions: Method of *ijtihad al-Hanafiyyah* against scripture of *qat'iyyah al-dalalah* on animals zakat. According to *Hanafiyyah*, the special arguments that led to the *al-qatiyyah al-dalalah* can be decided if there are other arguments found that can interpret the meaning of 'special' to other purposes. The word 'special' may be transferred to that indication by the arguments of the other. For example, the Prophet's hadith that says:

"For every 40 goats, its (zakat) a goat" (Sunan al-Tirmizi, Kitab al-Zakah An Rasulillah, Chapter Ma Ja'a Fi Zakah al-Ibli wa al-Ghanam, Hadith No 621)

From this hadith, it can be understood that the rate of nisab of zakat for a goat is when it reaches the number of 40 goats without being interpreted to numbers other than those indicated by the hadith as it comes with a typical pronouncement. However, the *Hanafiyyah* has submitted different views in issuing the law on this issue by interpreting the goat (shah) noted with typical pronouncement in this hadith with two purposes, namely an actual goat and was also intended by the present value of a goat. Their arguments in this view were based on the study of the *Maqasid shariah* which is the preservation of maslahah itself. This is to clarify with respect to the implementation of zakat which among other things aims to benefit the poor and complement their needs. Therefore, the purpose of the implementation can be met by issuing an actual goat or even by simply removing the current value of the goat in place of an actual goat (Zaidan, 1993).

III. Proofs Of *Ijtihad* According To Maslahah

Ijtihad is a process that needs a *mujtahid* to derive the rules from the sources of Al-Quran, Al-Sunnah, and *ijma'*. Within the process of *istinbat*, they must rely on the elements of proofing (*istidlal*), and deduction (*istinbat*) in Islamic Sharia that are resided in three fields of knowledge including; *Usul Fiqh*, *Qawaid Fiqhiyyah*, and *Maqasid Shariah* (Banani, 2014). These fields of knowledge are always adjacent to the discussion of maslahah, specifically in the knowledge of *maqasid shariah* that debates the aspect of maslahah profoundly. *Usul Fiqh* on the other hand, undergoes the method of *mujtahids* obtaining the proofs that have conclusive connection with maslahah within the discussion of inferences used in *ijtihad*. For instance, *Istihsan* can be defined as a foundation where most of its applications are made to unravel maslahah. As mentioned by Ibn Rusyd (1986); "the meaning of *Ihtihsan* in most situations is to turn away from maslahah and justice. Similarly, *Sad al-Zarai'* (سد الذرائع) is referred to the action of avoiding perils (درا المفساد). Maslahah/Benefit that can be perceived in this base is; it allows the prohibition towards things that are appropriate through the clarification of *nas*. Literally, it argues the *nas* in order to uphold and correspond with the maslahah. However, in *Qawaid Fiqhiyyah*, the status of Maslahah can be observed through method such as; *الاصل فى المنافع الحل وفى المضر المنع* which means "if it brings righteousness it is permissible, if it causes perils it is forbidden". The same goes to the method of *لا ضرر ولا ضرار* which means "harmless and undisturptive". Related to this issue, Raisuni & Barut (2000) stated that these methods of *fiqh* establish the *syariah* based on the maslahah which turns out to be *dhabit* of the maslahah itself. In accordance to the broad attributes of maslahah in the field of *ijtihad*, various terms have been proposed by the Muslim scholars (*ulama'*) in order to interpret the application of maslahah in the scope of *ijtihad*. Some of the terms are; *ijtihad al-Maqasidi* (Banani, 66), and *ijtihad istislahi* (Abbasi, 2007).

6.0 CONCLUSION : GUIDELINES TO THE APPLICATION OF MASLAHAH IN THE SCOPE OF IJTIHAD

Abbasi (2007) had placed several types of dhawabit as the requirement of using ijtihaḍ which are; 1. It should not be contrary to common nas/inferences be it from the Quran, Hadith, or ijma'; 2. It has to justify the maqasid shariah, and should not be contrary to it; 3. It must comply with the decisions of fuqaha'. Furthermore, Abbasi (2007) had affirmed that the application of maslahah can be considered as the final approach if ijtihaḍ that is used to understand the nas/inference (bayani), and ijtihaḍ with the practice of qiyas (qiyasi) did not manage to unravel the uncertainties that require the ijtihaḍ. In addition, ijtihaḍ bayani needs to be executed first prior to qiyasi, followed by istislahi upon the issues raised. In general, both ijtihaḍ bayani, and ijtihaḍ qiyasi have not gone beyond nas/inference; either in the form of understanding the nas, or qiyas towards the nas. This situation is different from ijtihaḍ al-istislahi (ijtihaḍ that uses masoleh al mursalahah) which is tangibly excluded from the nas. Ijtihaḍ al-istislahi will be implemented whenever there are issues that could not be solved through ijtihaḍ al-Bayani, and al-Ijtihaḍ al-Qiyasi that is due to the failure of explaining directly from the nas, as well as obstacles to implement qiyas. Given that ijtihaḍ has nothing to do with the existing nas; except for the ones within qiyas towards maslahah, therefore ijtihaḍ al-Istislahi is related to the process of determining maqasid al-shariah in general. As conclusion an analysis on the maslahah and ijtihaḍ should be broadened following the necessities for ijtihaḍ in certain issues that need the observation of maslahah. Some of the fields that need the observation of maslahah are: economy, medicinal, halal industry, etc. Without proper observation of maslahah, there will be complication in determining the ijtihaḍ. Nevertheless, the observation of maslahah has to go through the appropriate guidelines which are the inferences/proofs from the Quran and Hadith. Misinterpretation in realizing this basic concept can lead to misleading sharia rules through the method of ijtihaḍ. Furthermore, the high status of maslahah within ijtihaḍ does not imply that all ijtihaḍ should be influenced by maslahah to the extent where they neglect the required dhawabit. In a nutshell, maslahah can be considered as the main instruction in the process of ijtihaḍ. However, it needs to be fully comprehended in order to avoid the exploitation of sharia laws by allowing and forbidding certain things in the name of maslahah without concerning the suitable sources which are: Quran and Hadith.

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